IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

Chapter VIII, Rule 32(2) (b)
Description of case

Crl. Misc. Application No. 276 of 2006

Date of Decision: 20-6-2006

A.F.R. (Approved for Reporting)

~~Not approved for reporting~~

Date:- 20-6-206 Initials of Judge

Note:- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No. 276 of 2006

Radha Govind
S/o Late Shri Hanuman Prasad
R/o In front of Thanda Kunwa Moti Bazar Hardwar ….Applicant

Versus

1. State of Uttaranchal
2. Haridwar Development Authority, Haridwar …..Respondents

Sri Mangal Singh Chauhan, learned counsel for the applicant.
Sri G.S. Sandhu, learned A.G.A. for the State.

Hon'ble J.C.S. Rawat, J.

The petition u/s 482 Cr.P.C. has been filed to quashing the proceeding of complaint No. 4291 of 2004, Hardwar Development Authority Vs. Radha Govind u/s 26 (1), 28 (4) of U.P., Uttaranchal Nagar Planning and Development Act pending before the court of learned Chief Judicial Magistrate, Haridwar.

A complaint was filed by the Haridwar Development Authority against the present applicant in which it was alleged that the complainant got inspected his premises on 09.04.2001 and found that the applicant was replacing his old beams and he was likely to built the roof thereupon. It was further alleged that the applicant had started to construct the beams on the first floor of the house. The complaint was filed on 11.12.2003 by the complainant. The Magistrate took the cognizance under the relevant section of the Urban Planning and Development Act,1973.

Feeling aggrieved by the said order, the present petition has been filed.

It was alleged that the Act complained against the applicant is punishable with fine or imprisonment below 6 months. The complaint was filed after an inordinate delay and the complaint as well as the cognizance order were barred by the limitation u/s 468 Cr.P.C. the complaint should have been filed within six months from

the date of the commission of the offence. It was contended that the inspection was made in the year 2001 and thereafter, the complaint was filed about 3 years after the commission of the offence.

It was contended on behalf of the learned counsel for the applicant that since limitation prescribed under Section 468 Cr.P.C., had expire before the filing of the complaint. The court had not jurisdiction to take the cognizance of the offence. Learned A.G.A. refuted the contention and contended that the offence complained against the applicant is a continuing offence and the present act complained against the applicant would be covered u/s 472 Cr.P.C. and not by the provision of 468 Cr.P.C. It was further contended that a non-continuing offence is committed once and for all, whereas a continuing offence is one which continues. Whether a particular offence is continuing one shall necessarily depend upon the language of the statute creating the offence, the nature of the offence and, above all the purpose which is intended to be achieved by constituting the particular act as an offence. It was further contended that the said construction which had not been completed at the time of the giving of the notice and it was in continuation to be constructed. Even if the act complained is illegal construction of the building, it would shall remain illegal construction till it is regularized. Once it is regularized then it will not be a continuing offence. Perusal of the record clearly reveals that it is true that in the complaint itself had been alleged that on 09.04.2001, the inspection was made and the construction was in progress at that time thereafter a mandatory notice was given to the applicant and thereafter the said prosecution was launched. The said prosecution had been launched u/s 28 sub-clause4. It is alleged in the complaint that a notice was given and the applicant had not stopped the illegal construction in spite of the notice as such he had committed an offence u/s 28 sub-clause 4 of Urban Planning and Development Act,

1973. Section 28 sub-clause 4 of the Urban Planning and Development Act, 1973 provides as under:-

"(4) Any person failing to comply with an order under section (1) shall be punishable with fine which may extend to two hundred rupees for every day during which the non-compliance continues after the service of the order."

The above definition clearly reveals that the continuing offence is one which continues and non-continuation offence is one which is committed once and for all. Sometimes, the court feels difficulty to explain as to when the offence can be described as a continuing offence. The Hon'ble Apex Court in **Bhagirath Vs. State of M.P. Air 1984 SC 1688** has taken the illustrated case of the English law as well as of the Indian High Courts. The same are quoted as under:-

"12. In Best V. Butler and Fitzqibbon, (1932) 2 KB 108, the English Trade Union Act, 1871 made it penal for an officer or a member of a Trade union to willfully withhold any money, book, etc. of the Trade Union. It was held in that case that the offence of withholding the money was a continuing offence, the basis of the decision evidently being that every day that the moneys were willfully withheld, the offence was committed.

13.In Verney V. Mark Fletcher & Sons Ltd., (1909) 1 KB 444, Section 10 (1) of the Factory and Workshop Act, 1901 provided that every fly-wheel directly connected with steam, water or other mechanical power must be securely fenced. Section 135 provided the penalty for non-compliance with section 10(1), while Section 146 provided that information of the offence shall be laid within three months after the date on which the offence comes to the knowledge of the Inspector. It was held that the breach of section 10 (1) was a continuing breach and therefore the information as a time. Every day that the flywheel remained unfenced, the factory was run

otherwise than in conformity with the Act of 1901 and, therefore, the offence defined in Section 10 was a continuing offence.

14. The third English case referred to is The London County Counsel V. Worley, (1984) 2 QB 826, in which Section 85 of the Metropolis Management amendment Act, 1852 prohibited the erection of a building on the side of a new street in certain circumstances, without the consent of the London Country Council. The Court construed Section 85 as creating two offence: building to a prohibited height and, continuing such a structure already built after receiving a notice from the County Council. The Court held that the latter offence was a continuing offence.

15. In Emperor V. Karsandas, AIR 1942 Bom 326, Section 390 (1) of the Bombay City Municipal Act, 1988 provided that no person newly establish in any premises any factory of a certain description without the previous permission of the Commissioner nor shall any person work or allow to be worked any such factory without such permission. It was held by the High Court that establishing a new factory was an offence committed once and for all but, working it without permission was a continuing offence.

16. In State of Bombay V.s Bhiwandiwala, ILR (1955) Bom 192 : (Air 1955 Bom 161) it was held that the offence of using the premises as a factory without a license is a continuing offences.

17. In State of Bihar V. J.P. Singh, 1963 BLJR 782, the High Court of Patna held that conducting a restaurant without having it registered and without maintaining proper registers were continuing offence."

The Hon'ble Apex Court had held after the consideration of the above judgments as under:-

"*19. The question whether a particular offence is a continuing offence must necessarily depend upon the language of the statute which creates that offence, the nature of the offence and, above all, the purpose which is intended to be achieved by constituting the*

particular act as an offence. Turning to the matters before us, the offence of which the appellants are charged is the failure to pay the employer's contribution before the due date. Considering the object and purpose of this provision, which is to ensure the welfare of workers, we find it impossible to hold that the offence is not of a continuing nature. The appellants were unquestionably liable to pay their contribution to the Provident Fund before the due date and it was within their power to pay it, as soon after the due date had expired as they willed. The late payment could not have absolved them of their original guilt but it would have snapped the recurrence. Each day that they failed to comply with the obligation to pay their contribution to the Fund, they committed a fresh offence. It is putting an incredible premium on lack of concern for the welfare of workers to hold that the employer who has not paid his contribution or the contribution of the employees to the Provident Fund can successfully evade the penal consequences of his act by pleading the law of limitation. Such offences must be regarded as continuing offence, to which the law of limitation cannot apply.''

Perusal of the Section clearly reveals that the offence against the applicant is of continuing offence and as such, the provision of 468 Cr.P.C. will not be applicable. I find force in the contention raised by the learned A.G.A.

The learned counsel for the applicant also annexed the copy of the judgment decided by this court on 10th April, 2002 as Criminal Revision No. 674 of 2001 reported in **[2002 (44) ACC 1071, Nagarpalika, Haldwani Vs. Jogendra Singh Anand]** in which it was held that if the delay condonation application has not been filed alongwith the complaint, the complaint is liable to be dismissed. In this judgment, there was no question involved as to whether the offence was a continuing offence or not. The court had no occasion to consider this aspect of the law as such, the above judgment is not applicable on the facts and circumstance of the present case.

In view of the above discussion the petition devoids of merit is liable to be dismissed and is dismissed accordingly.

All applications pending in this case are stand disposed of in terms of the judgment.

(J.C.S. Rawat, J.)

20th June, 2006
Shiv